

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION**

VIRTAMOVE, CORP,

Plaintiff,

v.

AMAZON.COM, INC.,
AMAZON.COM SERVICES LLC, and
AMAZON WEB SERVICES, INC.,

Defendants.

Civil Action No. 7:24-cv-00030

JURY TRIAL DEMANDED

**DECLARATION OF JEREMY A. ANAPOL
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR TRANSFER**

I, Jeremy A. Anapol, declare and state as follows:

1. I am a partner in the law firm of Knobbe, Martens, Olson & Bear, LLP. I am counsel for Defendants Amazon.com, Inc., Amazon.com Services LLC, and Amazon Web Services, Inc. (collectively, “Amazon”) in this action and I appear *pro hac vice*. I make this declaration based on my personal knowledge and an investigation of the facts described herein. I have added highlighting to some exhibits listed below to make cited information easier to find.

2. Attached hereto as Exhibit 1 is a true and correct copy of a *Harvard Business School* case consisting of “Vinod Khosla and Sun Microsystems (A)” dated December 14, 1989 and “Vinod Khosla and Sun Microsystems (B)” dated September 28, 1999.

3. Attached hereto as Exhibit 2 is a true and correct copy of an archived page of Sun’s Press Releases showing an article entitled “SUN ANNOUNCES SOLARIS[tm] 9 OPERATING ENVIRONMENT: WITH OVER 300 NEW FEATURES, CUSTOMERS SAVE MONEY AND TIME” as on June 4, 2002. The address of the original webpage being captured is <http://www.sun.com/smi/Press/sunflash/2002-05/sunflash.20020522.2.html>.

4. Attached hereto as Exhibit 3 is a true and correct copy of a *CNET* article dated November 13, 2003 and entitled “Sun builds software to slice up servers.” I obtained this article from <https://www.cnet.com/tech/services-and-software/sun-builds-software-to-slice-up-servers/>.

5. Attached hereto as Exhibit 4 is a true and correct copy of an excerpt from a publication dated May 2005 and entitled “Solaris Containers – What They Are and How to Use Them.” This article came from <https://www.filibeto.org/sun/lib/blueprints/819-2679.pdf>.

6. Attached hereto as Exhibit 5 is a true and correct copy of United States Patent Provisional Application No. 60/469,558. I obtained this application from the web site of the United States Patent and Trademark Office (“USPTO”).

7. Attached hereto as Exhibit 6 is a true and correct copy of United States Patent No. 7,437,556. I obtained this application from the web site of the United States Patent and Trademark Office (“USPTO”).

8. Attached hereto as Exhibit 7 is a true and correct copy of Andy Tucker’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under “Contact.”

9. Attached hereto as Exhibit 8 is a true and correct copy of John Beck’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under “Contact.”

10. Attached hereto as Exhibit 9 is a true and correct copy of Daniel Price’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under “Contact.”

11. Attached hereto as Exhibit 10 is a true and correct copy of a page from USENIX showing an Abstract of a publication by Steven Osman et al. in 2002 and entitled “The Design and Implementation of Zap: A System for Migrating Computing Environments.”

12. Attached hereto as Exhibit 11 is a true and correct copy of an article presented at the 5th Symposium on Operating Systems Design and Implementation held in Boston, Massachusetts from December 9 to 11, 2002 and entitled “The Design and Implementation of Zap: A System for Migrating Computing Environments.”

13. Attached hereto as Exhibit 12 is a true and correct copy of Steven Osman’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under “Contact.”

14. Attached hereto as Exhibit 13 is a true and correct copy of Dinesh Subhraveti's LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under "Contact."

15. Attached hereto as Exhibit 14 is a true and correct copy of Gong Su's LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under "Contact."

16. Attached hereto as Exhibit 15 is a true and correct copy of Jason Nieh's LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under "Contact."

17. Attached hereto as Exhibit 16 is a true and correct copy of the cover pages of United States Patent Nos. 7,519,814 and 7,784,058, listing the patents' original assignee.

18. Attached hereto as Exhibit 17 is a true and correct copy of a record obtained from the Ontario Business Registry via the Ministry of Public and Business Service Delivery, showing Trigence Corp. was a Canadian corporation headquartered in Ottawa, Ontario, Canada.

19. Attached hereto as Exhibit 18 is a true and correct copy of a page from TravelMath.com showing the driving distance between Ottawa, Ontario, Canada and Midland, Texas, United States.

20. Attached hereto as Exhibit 19 is a true and correct copy of a Corporate Profile obtained from Innovation, Science and Economic Development Canada showing that VirtaMove Corp. is based in Canada.

21. Attached hereto as Exhibit 20 is a true and correct copy of Paul O'Leary's LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under "Contact."

22. Attached hereto as Exhibit 21 is a true and correct copy of Dean Huffman's LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under "Contact."

23. Attached hereto as Exhibit 22 is a true and correct copy of Don Rochette's LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under "Contact."

24. Attached hereto as Exhibit 23 is a true and correct copy of a page from TravelMath.com showing the distance between Dayton, Ohio and Midland, Texas.

25. Attached hereto as Exhibit 24 is a true and correct copy of a "contact us" page of Docker showing that Docker is based in Palo Alto, California. I obtained this page from <https://www.docker.com/company/contact/>.

26. Attached hereto as Exhibit 25 is a true and correct copy of a blog post from Docker.com identifying Solomon Hykes as Docker's founder. I obtained this page from <https://www.docker.com/blog/docker-nine-years-young/>.

27. Attached hereto as Exhibit 26 is a true and correct copy of a screenshot of a YouTube video available at <https://www.youtube.com/watch?v=wW9CAH9nSLs>.

28. Attached hereto as Exhibit 27 is a true and correct copy of a web page showing that PYCON US 2013 was held in Santa Clara, California. The web page is available at <https://us.pycon.org/2013/>.

29. Attached hereto as Exhibit 28 is a true and correct copy of Solomon Hykes's LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under "Contact."

30. Attached hereto as Exhibit 29 is a true and correct copy of a Microsoft News Center article dated October 15, 2014 and entitled “Docker and Microsoft partner to bring container applications across platforms.” I obtained this article from <https://news.microsoft.com/2014/10/15/dockerpr/>.

31. Attached hereto as Exhibit 30 is a true and correct copy of a Cloud Native Computing Foundation announcement entitled “containerd joins the Cloud Native Computing Foundation.” I obtained this from <https://www.cncf.io/announcements/2017/03/29/containerd-joins-cloud-native-computing-foundation/>.

32. Attached hereto as Exhibit 31 is a true and correct copy of an excerpt from the LinkedIn profile for the Cloud Native Computing Foundation. I obtained this document from <https://www.linkedin.com/company/cloud-native-computing-foundation/about/>.

33. Attached hereto as Exhibit 32 is a true and correct copy of the containerd project home page. I obtained this page from <https://containerd.io>.

34. Attached hereto as Exhibit 33 is a true and correct copy of Derek McGowan’s X.com profile page where he refers to himself as a “@containerd maintainer.” I obtained this page from <https://x.com/derekmcgowan>.

35. Attached hereto as Exhibit 34 is a true and correct copy of Derek McGowan’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under “Contact.”

36. Attached hereto as Exhibit 35 is a true and correct copy of Tonis Tiigi’s GitHub profile page. I obtained this page from <https://github.com/tonistiigi>.

37. Attached hereto as Exhibit 36 is a true and correct copy of an AWS page entitled “Fire TV at Amazon Prime Video Modernizes Its Stack Using Amazon ECS with AWS Fargate.”

I obtained this page from <https://aws.amazon.com/solutions/case-studies/amazon-prime-video-ecs-case-study/> and captured it using my web browser's "reader view." This page is also referenced in VirtaMove's First Amended Complaint. (Dkt. No. 23 at ¶ 26.)

38. Attached hereto as Exhibit 37 is a true and correct copy of Brent Marieb's LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under "Contact."

39. Attached hereto as Exhibit 38 is a true and correct copy of Sanket Patel's LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under "Contact."

40. Attached hereto as Exhibit 39 is a true and correct copy of Hani Suleiman's LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under "Contact."

41. Attached hereto as Exhibit 40 is a true and correct copy of an AWS page listing all supported regions for Amazon ECS on AWS Fargate. I obtained this page from https://docs.aws.amazon.com/AmazonECS/latest/developerguide/AWS_Fargate-Regions.html.

42. Attached hereto as Exhibit 41 is a true and correct copy of Greg O'Connor's LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under "Contact."

43. Attached hereto as Exhibit 42 is a true and correct copy of Google Flights pages showing flights between Seattle and San Francisco, San Jose, and Oakland.

44. Attached hereto as Exhibit 43 is a true and correct copy of Google Flights page showing flights from Seattle to Midland.

45. Attached hereto as Exhibit 44 is a true and correct copy of Google Flights page showing flights from Midland to Seattle.

46. Attached hereto as Exhibit 45 is a true and correct copy of an Amazon page showing that Amazon has a Palo Alto office hosting the Amazon Web Services teams. I obtained this page from <https://www.amazon.jobs/en/locations/palo-alto>.

47. Attached hereto as Exhibit 46 is a true and correct copy of a Google Maps page showing the driving distance between Amazon's office in Austin and Midland.

48. Attached hereto as Exhibit 47 is a true and correct copy of Google Flights pages showing flights from Ottawa to San Francisco, San Jose, and Oakland.

49. Attached hereto as Exhibit 48 is a true and correct copy of Google Flights pages showing flights from Ottawa to Midland.

50. Attached hereto as Exhibit 49 is a true and correct copy of Google Flights pages showing non-stop flights from (1) Cincinnati or Columbus to San Francisco, and (2) Cincinnati or Columbus to Midland.

51. Attached hereto as Exhibit 50 is a true and correct copy of an article authored by Jeffrey C. Mogul, dated December 1987, and entitled "The Packet Filter: An Efficient Mechanism for User-Level Network Code."

52. Attached hereto as Exhibit 51 is a true and correct copy of an article authored by David R. Cheriton and entitled "VMTP: A Transport Protocol for the Next Generation of Communication Systems."

53. Attached hereto as Exhibit 52 is a true and correct copy of Jeffery C. Mogul's LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under "Contact."

54. Attached hereto as Exhibit 53 is a true and correct excerpt from a Forbes profile of David Cheriton. I obtained this page from <https://www.forbes.com/profile/david-cheriton/>.

55. Attached hereto as Exhibit 54 is a true and correct copy of excerpts from the Australian Unix Systems User Group Newsletter Volume 8 Number 5 which includes a paper entitled “SunOS Release 4.0” by Rich Burridge from Sun Microsystems Australia.

56. Attached hereto as Exhibit 55 is a true and correct copy of an article authored by Robert Gingell et al. entitled “Shared Libraries in SunOS.”

57. Attached hereto as Exhibit 56 is a true and correct copy of Robert Gingell’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under “Contact.”

58. Attached hereto as Exhibit 57 is a true and correct copy of an article authored by Paul R. Eggert and D. Stott Parker, entitled “File Systems in User Space,” and published at 1993 Winter USENIX.

59. Attached hereto as Exhibit 58 is a true and correct copy of a UCLA Samueli School of Engineering profile page of Paul Eggert. I obtained this page from <https://samueli.ucla.edu/people/paul-eggert/>.

60. Attached hereto as Exhibit 59 is a true and correct copy of a GitHub page showing the repository for Docker. I obtained this page from <https://github.com/moby/moby>.

61. Attached hereto as Exhibit 60 is a true and correct copy of a GitHub page showing the repository for *containerd*. I obtained this page from <https://github.com/containerd/containerd>.

62. Attached hereto as Exhibit 61 is a true and correct copy of a 2024 San Francisco Chronicle article entitled “Microsoft subsidiary renews S.F. headquarters lease despite remote

work policy.” I obtained this page from <https://www.sfchronicle.com/realestate/article/s-f-github-renews-lease-18670310.php>.

63. Attached hereto as Exhibit 62 is a true and correct copy of a Statement of Information for Google LLC obtained from the Office of the Secretary of State of California showing that Google has a principal address in Mountain View, California.

64. Attached hereto as Exhibit 63 is a true and correct copy of a Docket Navigator page showing the median time to trial in NDCA last year was 30 months.

65. Attached hereto as Exhibit 64 is a true and correct copy of a Docket Navigator page showing the median time to trial in NDCA over the last five years was 30 months.

66. Attached hereto as Exhibit 65 is a true and correct copy of Docket Navigator pages showing the number of patent cases filed in or assigned to Midland and the number of patent trials in Midland.

67. Attached hereto as Exhibit 66 is a true and correct copy of Andrew Gabriel’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under “Contact.”

68. Attached hereto as Exhibit 67 is a true and correct copy of David Comay’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under “Contact.”

69. Attached hereto as Exhibit 68 is a true and correct copy of Ilias Ozgur Can Leonard’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under “Contact.”

70. Attached hereto as Exhibit 69 is a true and correct copy of Maged (Migo) Bekhit’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left

corner of the PDF, under “Contact.” Mr. Behkit identified Haoqi Wang—who is part of Mr. Behkit’s team at Amazon Web Services (“AWS”—as the finance point-of-contact for the End-of-Support Migration Program for Windows Server (“EMP”).

71. Attached hereto as Exhibit 70 is a true and correct copy of Haoqi Wang’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under “Contact.”

72. Attached hereto as Exhibit 71 is a true and correct copy of Tamara Dull’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under “Contact.” Ms. Dull identified herself and Frank Wang as providing marketing support for EMP as part of their responsibility for Microsoft workloads on AWS.

73. Attached hereto as Exhibit 72 is a true and correct copy of Frank Wang’s LinkedIn profile. The web address from which the PDF was obtained is shown in the top left corner of the PDF, under “Contact.”

74. I wrote to the following witnesses to ask whether they would be willing to testify voluntarily in this case: Solomon Hykes, Derek McGowan, Tonis Tiigi, Dinesh Subhraveti, Paul Eggert, David Cheriton, John Beck, Daniel Price, Steven Osman, Robert Gingell, and Greg O’Connor. Hykes, McGowan, Tiigi, Eggert, Cheriton, Price, Osman, and O’Connor did not respond to my inquiries.

75. Subhraveti stated that he is “open” to testifying in this case. He confirmed that he resides in San Jose, California.

76. Gingell stated that he would likely be “willing to testify” unless he is “unable to travel” when the trial date is scheduled. He confirmed that he resides in Sunnyvale, California.

77. Beck stated that he “might” be willing to testify if “the timing did not conflict with other plans” and if “someone were to pay for me to travel for Midland” and “cover hotel/meal/etc expenses.” He stated that he would “definitely not” be willing to testify if he had to pay for these items himself. He confirmed that he resides in San Jose, California.

78. I understand that Andrew Tucker works for Google. I therefore asked Google’s counsel whether Dr. Tucker would be willing to testify in this case. Google’s counsel has not yet indicated whether Dr. Tucker would be willing to do so.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of June, 2024 at Irvine, California.

/s/ Jeremy A. Anapol

June 11, 2024

Respectfully submitted,

Of Counsel:

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Amazon.com Services, LLC
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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2024, all counsel of record who are deemed to have consented to electronic service were served with a copy of the foregoing via the Court's CM/ECF System.

/s/ Jeremy A. Anapol

Jeremy A. Anapol